BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 1992 of 2021

In the Matter of:

Petition under the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments thereto for revision of Renewable Power Purchase Obligation (RPO) for FY 2019-20.

Petitioner	Deendayal Port Authority (DPA) P & C Buildings, Ground Floor Kandla, Gujarat — 370210.
Represented By	Mr. Abhishek Dixit and Mr. Mehul Mehta.

CORAM:

Pankaj Joshi, Chairman
Hiren Shah, Member
Jatin N. Thakkar, Member

Date: 29/07/2026

ORDER

1. The present Petition has been filed by the Petitioner for compliance of RPO against the RPO targets specified by the Commission in the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 read with its subsequent amendment Regulations. The Petitioner has prayed for allowing wind power procurement to meet the overall RPO obligation for FY 2019-20. The aforesaid issue is associated with the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 alongwith amendments thereto notified by the Commission.

2. The Petitioner has submitted that regarding the Renewable Purchase Obligation for Quarter 1 and Quarter 2 of FY 2019-20, the Petitioner referred to the Commission's Order in in the matter of Suo-out Petition No. 1542 of 2015 dated 31.12.2016, wherein under clause no. 15, the Commission has exempted DPT from compliance to RPO, on the grounds that DPT is procuring power from PGVCL, which consists of the renewable energy component also. The relevant clause of the referred order is reproduced here under for ready reference:

"15. We also note that Jubilant *Infrastructure Limited, GIFT Power Company Limited and Aspen Infrastructure Limited and Kandla Port Trust are procuring the power from the DGVCL, UGVCL, MGVCL and PGVCL respectively, which consists of the renewable energy component also. Therefore, we exempt them from the renewable purchase obligations specified by the Commission."*

2.1. Based on the above, the Petitioner has filed the present Petition to allow to compensate shortfall of RPO from Solar and other sources with surplus wind RPO for FY 2019-20 by invoking power vested under para 2 of Regulations of GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 read with subsequent amendments.

2.2. It is submitted that the Deendayal Port Authority is a distribution licensee as per the license for supply of electrical energy granted by Chief Commissioner of Kutch under Indian Electricity Act, 1910 as per Notification No. AF-133/55 dated 12.04.1956. Consequent to the enactment of the Electricity Act, 2003, DPA has become a deemed licensee under the Act.

2.3. It is submitted that the Commission in exercise of the powers conferred under Sections 61, 66, 86 (1) (e) and 181 of the Electricity Act, 2003 has enacted GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 for promoting the sale of power from renewable energy sources and procurement

of energy from renewable sources by distribution licensee within the State of Gujarat vide its Notification No. 03 of 2010 dated 17.04.2010. In the RPO Regulations and its subsequent amendments, the Commission has specified the minimum percentage for the procurement of power from wind, solar and other sources.

2.4. The Petitioner has referred to Regulation 4 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 alongwith its second amendment dated 21.04.2018 and submitted that the Commission has given trajectory of 14.30% for compliance of RPO for FY 2019-20 of which 8.05% is to be fulfilled from wind, 5.5% from solar and 0.75% from others category of Renewable Sources of energy.

2.5. It is further submitted that the Hon'ble Appellate Tribunal for Electricity (APTEL), in its Judgment dated 25.04.2014 in Appeal No. 24 of 2013 and IA No. 39 of 2013, directed that upon completion of each financial year, the State Commission shall undertake a review of the actual Renewable Purchase Obligation (RPO) compliance by the obligated entities. Based on such review, the Commission is required to issue appropriate directions in accordance with the prevailing Regulations, either Suo-Motu or upon a Petition filed by an obligated entity. The review process shall be subject to a public notice to seek comments, suggestions, and objections from all stakeholders.

2.6. The details submitted for the RPO compliance by the Petitioner for the FY 2019-20 from various renewable energy sources, i.e. Solar, Wind and Others taking into account the total power purchase requirement is as under:

Deendayal Port Authority				
Energy Required	**MUs**	**11.652**		
Wind	%	8.05%	98.13%	(-) 90.08%
	MUs	0.938	11.434	(-) 10.496
Solar	%	5.50%	0.00%	5.50%
	MUs	0.641	0.000	0.641

Deendayal Port Authority				
Energy Required	**MUs**	**11.652**		
Others	%	0.75%	0.00%	0.75%
	MUs	0.087	0.000	0.087
Total	%	14.30%	98.13%	(-) 83.83%
	MUs	1.666	11.434	(-) 9.768

2.7. The Petitioner has submitted that power procurement from wind (non-solar) is very high in comparison to RPO requirement. Procurement of additional power from solar energy will add an extra cost to the Petitioner, which will in turn put extra burden to the consumer. Therefore, the Petitioner is procuring most of its energy (wind power) and requested the Commission to consider the power procurement from wind to meet overall RPO obligation.

3. The Commission vide Daily Order dated 16.11.2021 directed the Petitioner to upload the public notice in one daily Gujarati Newspaper and one English Newspaper having wide circulation in the State/National level for inviting comments and suggestions from the stakeholders on the present Petition.

4. In response to the above Daily Order, the Petitioner has issued public notice in Gujarati News Paper namely, Kutch Mitra and English News Paper in Times of India dated 19.01.2022. Neither the Staff of the Commission nor the Petitioner has received any objections/suggestions from the stakeholders.

5. The Commission has also in the said Daily Order directed the Petitioner to provide the details regarding renewable power already tied up. The Petitioner submitted the details vide letter dated 23.11.2021 and stated that in order to promote renewable energy in the State, the Petitioner is focusing on the same and the commissioned 6 MW wind power plant at Sukhpur, Gujarat in March 2017 and recently added 4.2 MW wind power plant at Banugar, Gujarat in July, 2021 in DPT power mix. The yearly energy consumed from above plants, is mentioned below:

Sr. No.	Financial Year	Energy in MU's
1	FY 2017-18	10.368
2	FY 2018-19	8.592
3	FY 2019-20	11.435
4	FY 2020-21	6.761

5.1. The Petitioner has submitted that DPT is procuring 70% - 80% of its energy requirement through renewable source of energy (wind power). Therefore, it is requested to consider power procurement from wind to meet the overall RPO obligation.

6. Heard the parties.

7. The present Petition has been filed by the Petitioner for revision of minimum quantum of purchase (in %) from renewable energy source targets for the year FY 2019-20 in view of supply constraints or other factors beyond the control of the licensee under provisions of Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments.

7.1. We note that as directed by the Commission in various orders, the Petitioner is now indecently sourcing power procurement as an independent distribution licensee. This transition happened in FY 2019-20 itself and was at a nascent stage of power procurement. Hence, it was difficult for the Petitioner to source power through renewables as Renewable Purchase Obligation of petitioner was very less due to small consumer base/demand.

7.2. Based on the above facts and circumstances of the case, the Petitioner has requested for revision of the minimum percentage target for purchase of power from renewable energy sources in terms of Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010. Therefore, the issue that emerges for decision of the Commission is whether to revise the percentage targets of purchase from renewable energy sources for FY 2019-20 for keeping in view the supply constraints and the factors beyond the control of the licensee.

7.3. It transpires from the above RPO compliance by the Petitioner for the FY 2019-20 that the Petitioner has over compliance with regard to wind RPO category and not complied with the Solar RPO category. Consequently, there is a net over-achievement of 98.13% in overall RPO compliance.

7.4. In light of the above, the Petitioner submits that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 empowers the Commission to revise RPO targets in case of genuine constraints in renewable energy availability or other factors beyond the control of the obligated entity. Accordingly, the Petitioner prays that the Commission may consider the surplus Wind RPO towards offsetting the shortfall in Solar and Other categories and may grant appropriate relaxation in line with the provisions of the Regulations.

7.5. It is therefore necessary to refer to relevant provisions of Regulation 7 read with Regulation 9 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments thereto, under which the Commission has powers to revise the RPO percentage targets and/or the requirement of transferring the funds to a designated account against the shortfall in RPO compliance due to factors beyond the control of the Petitioner, which are reproduced below:

"……..

7.1 If the distribution licensee is un0bfe *to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified* quantum *for the next year. However, credit far excess purchase from renewable energy sources would* not *be adjusted in the ensuing year.*

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.

……"

7.6. The aforesaid Regulations recognize that the Commission may carry forward the shortfall of RPO percentage, if the obligated entity faced genuine difficulty and whenever the carry forward of RPO percentage is allowed by the Commission, the same has to be added to the RPO requirement of the next year as per the Regulations. It also provides that whenever there is excess purchase of renewable energy by the obligated entity, no set-off is to be given for such surplus energy against the RPO percentages of the next year. It also provides that when the RPO target is not met by the obligated entity, despite availability of renewable energy sources, the Commission may impose penalty on the obligated entities.

7.7. Regulation 9.1 states about the penalty to be imposed for non-fulfillment of RPO and compensation required to be paid by the obligated entity, which reads as under:

"……..

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to *deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission*

……."

7.8. It is also necessary to refer the fifth and sixth proviso of the aforesaid Regulation 9.1, which read as under:

> *"....*
>
> *Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECs, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:*
>
> *Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable.*
> *....."*

It is apparent from the above that the fifth proviso provides for carry forward of RPO when genuine difficulty is faced by the obligated entity in fulfilment of RPO. Similarly, the sixth proviso provides that when carry forward is allowed by the Commission, in such case no regulatory charges shall be applicable to the obligated entities.

7.9. Regulation 12 of the said Regulations pertains to 'Power to remove difficulties', which reads as under:

> *"12.1 The Commission shall suo-motu or on an* application com *any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations."*

Thus, the Commission is empowered for removal of difficulty, when there is an application made by any person generating electricity from the renewable energy sources or a distribution licensee or suo-motu.

7.10. From the combined reading of the above Regulations, it transpires that the Commission is empowered to (i) revise the RPO target, (ii) carry forward the

RPO to the next year, (iii) impose penalty on the obligated entities due to non-compliance of the RPO, (iv) grant exemption from payment of regulatory charge for non-compliance of the RPO, and (v) add, amend or alter the RPO Regulations as a part of removal of difficulties by passing an appropriate order.

7.11. The Petitioner has submitted that Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 provides for revising the RPO targets in case of supply constraints or factors beyond the control of the concerned obligated entity and as per the provisions of RPO Regulations, the Commission has power to give relaxation as may be deemed necessary in the scenario of RE supply constraints or other factors not attributable to concerned distribution licensee.

7.12. In this regard it is necessary to refer to Regulation 4.1 and Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010, the GERC (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014, and the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018, as under:

GERC (Procurement of Energy from Renewable Sources) Regulations, 20 10:

"4.1 Each distribution licensee shall purchase electricity {in *kWh) from renewable energy sources, at a defined* minimum *percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources,* at *a defined minimum percentage of his/her total* consumption *during a year.*

The defined minimum percentages are given below in the Table 1.

Table 1

Year	*Minimum Quantum of purchase (in %) from renewable energy sources* in *terms of energy in kWh)*

(1)	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.50%	0.50%
2012-13	7%	5.S%	1.00%	0.50%

lf the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

Provided further that such obligation to *purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the obligated entity concerned:*

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

4.1 The Commission may, suo-motu or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Reputations *keeping in view supply constraints or other factors beyond the control of the licensee."*

GERC (Procurement of Energy from Renewable Sources) First Amendment, Regulations, 2014:

"4) *Substitution of Table 1 of Regulation 4.1*

The table 1 provided *in Principal Regulation 4.1 shall be substituted by following table 1*

	Minimum Quantum of purchase (in %) *from renewable energy sources (in terms of energy in kWh)*			
Year	*TOTAL*	*Wind*	*Solar*	*Others (Biomass, Bagasse, MSW, etc.)*
2010-11	*5.00*	*4.50*	*0.25*	*0.25*
2011-12	*6.00*	*5.00*	*0.50*	*0.50*
2012- 13	*7.00*	*5.50*	*1.00*	*0.50*
2013- 14	*7.00*	*5.50*	*1.00*	*0.50*
2014-15	*8.00*	*6.25*	*1.25*	*0.50*
2015-16	*9.00*	*7.00*	*1.50*	*0.50*
2016-17	*10.00*	*7.75*	*1.75*	*0.50*

……"

GERC (Procurement of Energy from Renewable Sources) (Second Amendment), Regulations, 2018

"3) Substitution o/Table I of Regulation 4.1:

Table I provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 is substituted by following Table - I and II:

TABLE - I

	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in *kWh)*			
Year	*Wind*	*Solar*	*Others (Biomass, Bagasse, MSW, etc.)*	*Total*

(1)	(2)	(3)	(4)	(5)
2010-11	4.50	0.25	0.25	5.0
2011-12	5.00	0.50	0.50	6.0
2012-13	5.50	1.00	0.50	7.0
2013-14	5.50	1.00	0.50	7.0
2014-15	6.25	1.25	0.50	8.0
2015-16	7.00	1.50	0.50	9.0
2016-17	7.75	1.75	0.50	10.0

TABLE - II

	Minimum Quantum of purchase in %) from renewable energy sources (in terms of energy in kWh)			
Year	Wind	Solar	Others (Biomass, Bagasse, MSW, etc.)	Total
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.50	10.00
2018-19	7.95	4.25	0.50	12.70
2019-20	8.05	5.50	0.75	14.30
2020-21	8.15	6.75	0.75	I5. 65
2021-22	8.25	8.00	0.75	17.00

3) Substitution of para 2 of the Principal Regulation 4.1:

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilized for fulfilment of RPO in accordance with Column 5.

7.13. As per second amendment in RPO Regulation, the RPO trajectory stipulated under 'Table-11' is applicable for the period from FY 2017-18 to FY 2021-22. As provided in the above 'Table-II', the RPO for 2019-20 has been fixed at 14.30% consisting of 8.05% from wind, 5.50% from Solar and 0.50% from other Renewable Sources. Further the aforesaid amended Regulation 4.1 provides that in case of nonavailability of Solar or Wind or Others (including Biomass, Bagasse,

Hydro and MSW) renewable energy, in a particular year, shortfall of such energy, be made good through the energy available either from Solar or Wind or Other sources of energy including Biomass, Bagasse etc., whereas; Regulation 4.2 provides that keeping in view supply constraints or other factors beyond the control of the licensee, the Commission may suo-motu or at the request of a licensee, revise the percentage targets as per the aforesaid Regulation 4.1 for a year.

7.14. We further note that the Hon'ble APTEL in Appeal No. 24 of 2013 filed by the Appellant, Indian Wind Energy Association V/s. GERC & others has dealt with aforesaid aspects in its judgment dated 25.04.2014 and recorded as under:

"…….

63. Summary of our findings:

(i). Appeal filed by the association of wind energy project developers against the impugned order of the State Commission allowing relaxation in Renewable Purchase obligation of the distribution licensees is maintainable.

(ii). Since the present case is the first suo-motu review of compliance of the RPO obligations after the notification of the RPO Regulations and in view of the fact that there was no specific regulation for public notice *for such reviews, we do not want to hold that the absence of public notice in the suo motu proceeding was illegal. However, we feel that in the proceedings before the State Commission either suo motu or on a petition by a party, regarding review of RPOs in which consequential directions for relaxation or carry forward of RPO or creation of regulatory fund are given, public notice inviting suggestions and objections of the stakeholders is necessary. We have given some directions for* future *under paragraphs 29 and 30.*

(iii). We do not find any infirmity in the State Commission revising the RPO for FY 2010-11 by exercising its power under Regulation 4.2 of the RPO Regulations, 2010, in view of the reasons beyond the control of the distribution licensees.

(iv). We do not see any infirmity in the distribution licensee setting priority to procure renewable energy by entering into PPAs with the renewable energy generators to meet their RPO targets when the State is endowed with adequate renewable energy sources. However, if the distribution licensees are not able to make arrangements to procure adequate renewable energy to meet the RP0 targets, then they have to resort to alternate mechanism of REC specified in the Regulations to meet the shortfall in RP0. The aspect of availability of REC during FY 2011-12 has not been dealt with by the State Commission properly. On one hand, it decided that the GUVNL and its subsidiary distribution licensees did not make efforts to purchase REC and on the other hand it held that adequate REC were not available. No reason was given to come to conclusion that adequate REC were not available.

(v). FY 2011-12 and 2012-13 are since over and the following year 2013-14 is also over. At this stage we cannot turn the clock back and carry forward of REC cannot be reversed. Creating of Regulatory fund for non-adherence *to REC at this belated stage will also not serve any purpose. The Regulatory fund has also to be used partly for purchase of REC and partly for* development o/ *transmission infrastructure for evacuation of power for the renewable energy generators. By carry forward of the shortfall during 2011-12 to 2012-13 the objective of meeting the RPO obligation will be met. Therefore, we do not want to interfere with the directions of the State Commission regarding carry forward of shortfall in RPO during FY 2011-12. We have, however, given some guidelines to the State Commission for future under paragraph 55(A) to (D).*

(vi). We do not find any infirmity in the State Commission exercising its powers under Regulation 4.2 for adjustment of excess solar energy procured against Non-Solar RPO in the circumstances of the present case.

64. In view of above, the Appeal is partly allowed to the extent as indicated above. We have also given some directions/'guidelines to the State Commission to be followed in fixture. No order as to cost.

……"

7.15. The said aspect is also dealt in Appeal No. 258 of 2013 filed by the Indian Wind Power Association before the Hon'ble APTEL and the Hon'ble APTEL vide Order dated 16.04.20 15 decided as under:

"……..

71. Summary of our findings:

(i) The National Tariff Policy and the Regulation of the Central Commission and the State Commission recognize REC as valid instrument far fulfilling Renewable Purchase Obligation cast upon the obligated entities under Section 86(1)I of the Electricity Act, 2003. Purchase of REC would be deemed as purchase of energy from renewable energy source for fulfilling RPO obligation. When *a legal fiction has been created by a statute, the same should be given full effect.*

(ii} An obligated entity has option to fulfill its RPO either by procuring renewable energy in *physical form or by REC or partly by REC and partly by physical renewable energy. However, a distribution licensee has to exercise the option based on economic principles. An obligated entity other than the distribution licensee may also opt for purchase of REC for fulfilling its RPO obligation to avoid the issues involved* in *banking,* open *access, sale* o/surplus power, etc., *or if the RPO requirement is too small.*

(iii) Renewable energy generators like conventional generators have been given freedom under the Electricity Act in respect of choice of site, choice of counter-party buyer, freedom from tariff regulation when the generating company supplies to a trader or directly to a consumer. So far, the renewable energy generators were not able to exercise this freedom due to various constraints. The REC mechanism has opened up the market for renewable energy generators helping in expeditious exploitation of renewable energy potential in the country thus, serving the object of the Electricity Act, 2003. Thus, REC mechanism has to be encouraged. By treating REC as a valid instrument for discharge of mandatory RPO as set out in the Regulations, the State commission has only followed the mandate by the Electricity Act, 2003 under Section 86(1) for promotion of renewable sources of energy in the State.

(iv) *The State Commission can revise the RPO before or during a year or after passing of year under Regulation 4.2 of RE Regulation 2010 as explained under paragraphs 47 to 51 above. If the distribution licensee has not made efforts to procure requisite renewable energy to fulfill the RPO and also has not procured REC, the State Commission should not revise RPO under Regulation 4.2. However, while revising the RPO targets, the State commission has to ensure that such revision should not defeat the object of the Electricity Act and the Regulations.*

(v) *If the RPO targets are revised* under *Regulation 4.2 due to inadequate capacity addition in a resource rich State, such reduction has to be uniform for all the entities.*

(vi) *Under 5th proviso to Regulation 9, if the Commission is convinced that the obligated entity has faced genuine difficulty in meeting the RPO due to non-availability of power from renewable sources or the REC, it may allow carry forward the compliance requirement to the next year. However, before exercising power under Regulation 9, the State Commission has to satisfy itself that there was difficulty in meeting the RPO from purchase of REC. Therefore, non-availability of REC is a pre-condition for carry forward under Regulation 9.*

(vii) *Admittedly there was substantial reduction in capacity addition of wind energy and other sources of renewable energy in the State during FY 2012-13 due to reasons beyond the control of the distribution licensee. Under such a condition the State* Commission *can reduce RPO targets for the wind energy and other energy. However, such reduction due to capacity constraints has to be uniform for all the obligated entities in the State.*

(viii) *In the present case, the State Commission has revised the RPO targets for various distribution licensees as per the actual. This way the State Commission has set up different RPO targets for four States owned distribution license, Torrent Power Surat and Ahmedabad at different levels for the same reason of inadequate capacity addition. This is not permissible. The State Commission has incorrectly revised the RPO for the deemed distribution licensees to zero or nearly negligible amount due to financial impact, low energy consumption,*

nascent stage of operation etc., in contravention to the Regulations.

(ix) We find that RPO compliance of GUVNL for wind energy was satisfactory but compliance of biomass and other non-solar energy was quite low due to which there was default in fulfilling the non-solar RPO. Thus, during FY 2012-13 there appeared to be inadequate generation of biomass and other non-solar energy sources in the State. The State Commission has to examine the reasons for the same and take necessary measures for accelerating capacity addition of biomass and other sources of renewable energy in the State.

(x) We remand the matter to the State Commission to reconsider the whole issue afresh in light of our findings in this judgment. The State Commission is empowered to reduce the RPO targets for all the entities uniformly in view of reduction in capacity addition of wind energy and other sources in the State during the FY 2012-13. However, the consequences of shortfall with respect to the revised RPO for different distribution licensees/deemed distribution licensees has to *be decided by the State Commission according to Regulation 9.*

(xi) We do not find any infirmity in the State Commission relaxing the RPO for those deemed distribution licensees who purchase energy from GUVNL/distribution licensees at retail supply tariff and their consumption is included in determining the RPO of the supplying distribution licensee.

(xii) In the circumstances of the case, we do not want to interfere with the decision of the State Commission to set off the shortfall in non-solar energy purchase with excessive solar energy procured during FY 2012-13. However, we have given certain directions in this regard for future in paragraph 68 above.

(xiii) As regards public hearing for review of RPO, we have already given the necessary directions in our judgment in Appeal No. 24 of20013 which have been reproduced under paragraph 27.

……"

7.16. From the aforesaid decisions of the Hon'b1e APTEL, it is clear that Hon'ble APTEL has recognized that revision of the RPO targets before or during a year or after passing of the year by exercising its power under Regulation 4.2 of the

RPO Regulations, 2010 by the Commission, in view of the reasons beyond the control of the distribution licensees or due to inadequate capacity addition in a resource rich State is permissible.

7.17. We also note that the Hon'ble APTEL in the judgment dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 at para 48 recorded as under:

> "…..
>
> *48. RE Regulator, 2010 dated 17.4.2010 specified RPO for three years (2010-11 to 2012-13) with increasing quantum of RPO every year. Under Regulation 4.2, the RPOs can be revised before the beginning or during a financial year for that year if the State Commission is convinced that the targets set up by it are unrealistic and cannot be achieved. For example, on the basis of the experience of FY 2010-11 and 2011-12, if the State Commission feels that the targets set up by the Commission for FY 2012-13 are high and unrealistic, it may revise the same at the beginning of FY 2012-13 or during FY 2012-13. The State Commission may also revise the targets during a year due to force majeure such as natural calamity occurring during the year due to which it becomes impossible to achieve the RPO targets.*
>
> *……."

Thus, the Hon'b1e Appellate Tribunal while interpreting Regulation 4.2 read with Regulation 4.1 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 has recorded with clear findings on the powers of the Commission to revise the Renewable Purchase Obligation targets, if the same are found unrealistic considering the availability of renewable energy in the State.

7.18. Further, the finding recorded in para-49 of the Order dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 by the Hon'b1e Appellate Tribunal is reproduced below:

"……..

49. The State Commission may also revise the targets after the completion of financial year under Regulation 4.2 due to supply constraints or factors beyond the control of the licensee which may be due to *reasons such as:*

i) Actual renewable energy generation is below normative penetration *from tied up renewable energy sources due to reasons* beyond *the control of the distribution licensee.*

ii) Force majeure such as natural calamity resulting in supply constraints.

iii) Inadequate capacity addition in the State and RECs could not be purchased due to non-availability of REC despite efforts made by the distribution licensee. In a resource rich State where the State Commission had set up RPO targets keeping in view the anticipated capacity addition in the State, the State Commission may also revise the targets due to inadequate renewable capacity addition in the State.

iv) Minimum energy purchase obligation for renewable sources of energy was fixed on estimated energy consumption of the licensee in the ARR based on estimated growth but the actual consumption has been much lower due to slow growth or negative *growth or due to forced majeure. Thus, percentage RPO on actual energy consumption was met but minimum energy purchase target fixed in the ARR based on anticipated energy consumption could not be met.*

v) A distribution licensee has proposed to meet a part or full RPO by purchase *of REC but REC could not be purchased, despite efforts made by the licensee, due to non-availability of REC.*

……"

7.19. As per the above decision of the Hon'ble Appellate Tribunal for Electricity, the Commission has powers to revise the Renewable Purchase Obligation targets under Regulation 4.2 in case the State Commission finds it necessary to revise the target due to inadequate Renewable Capacity Addition.

7.20. In the event of such revision in the Renewable Purchase Obligation targets set up under Regulation 4.1, there cannot be any further consideration of the availability of Renewable Energy Certificates. In this regard, para 51 of the Hon'ble Tribunal's judgement dated 16.04.2015 in Appeal No. 258 of 2013 and Appeal No. 21 of 2014 is reproduced below:

> *51. We want to add that non-availability of REC may not always be a pre-condition for exercise of power to revise under Regulation 4.2. For Example, if the distribution licensees had tied up adequate capacity* at *preferential tariff but due to actual generation being lower than the normative generation due to reasons beyond the control of the distribution licensee or there is natural calamity in the State and energy* consumption *in the State has gone down or* renewable *energy generation in the State has been affected due to natural calamity then shortage of REC may not be a pre-condition to revise RPO targets set up under Regulation 4.1. Further, if in a resource rich State, the State Commission has set up RPO targets keeping in view anticipation of capacity addition in the State, the State Commission may also revise the targets due to inadequate capacity addition in the State due to reasons beyond the control of the distribution licensee.*

7.21. The Hon'b1e APTEL has decided that non-availability of RECs may not always be a pre-condition for exercise of powers under Regulation 4.2 of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010. The Commission may also revise the RPO targets in case of actual generation being lower than the normative generation due to reasons beyond the control of the Distribution Licensee or there is a natural calamity or inadequate capacity addition in the State.

7.22. We now need to examine the issue of whether capacity addition of renewable energy sources during FY 2019-20 was adequate or not, because cogent reading of para 49 (iii) and 51 of Hon'ble APTEL's judgment, clearly establishes

that in resource rich State, the Commission can revise the RPO targets in case of inadequate capacity addition, irrespective of the fact whether RECs are available or not. The inadequate addition of renewable energy capacity is independent ground for revision of Renewable Purchase Obligation targets of the entity concerned. Regulation 4.1 notified by the Commission prescribes the RPO targets for compliance by the obligated entities. Regulation 4.2 empowers the Commission to revise the targets. Regulation 5 says that renewable energy certificate is an instrument for fulfillment of RPO. Therefore, while deciding the issue, whether there was a supply constraint or not and for revision of RPO, para 51 of the above referred judgment of the Hon'ble APTEL wherein it is held that non-availability of RECs is not a condition precedent to revise the RPO targets and in a resource rich State, the State Commission is empowered to revise the targets due to inadequate RE capacity addition and reasons beyond control of the Distribution Licensees. The said judgment nowhere restricts the powers of this Commission to consider "relevant factors" for revision of the RPO targets. The Hon'ble Tribunal in the aforesaid judgment has decided that revision of the RPO targets applies uniformly to all licensees on the basis of lower availability of RE capacity addition.

7.23. In view of above, the availability of renewable energy sources need to be ascertained prior to revising the RPO targets or allowing carry forward or imposing penalty on the obligated entity. The availability of renewable energy sources is dependent on the potential of renewable energy generation in the State and outside.

7.24. Prior to deciding the requirement of revision of the RPO targets, it is necessary to verify as to whether there was adequate renewable capacity addition in the State or not for fulfillment of RPO targets by the obligated entities and whether the generation from such capacity was available to the obligated entities during the year. Accordingly, capacity addition in respect of various renewable sources of

generation, i.e. Wind and Solar within the State as well as at the national level was verified by the Commission as tabulated below:

Addition of Wind Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2017-18	272.80	1865.23	14.63%
2	2018-19	459.65	1480.97	31.04%
3	2019-20	1468.45	2117.78	69.34%
Total		2200.90	5463.98	40.28%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/ES_2020_240420m.pdf)

Addition of Solar Capacity

Sr. No	Financial Year	Gujarat (MW)	Nationwide (MW)	Percentage (%) addition in Gujarat
1	2017-18	339.00	9362.65	3.62%
2	2018-19	852.13	6529.23	13.05%/o
3	2019-20	508.24	6447.11	7.88%
Total		1699.37	22338.99	7.61%

(Source: http://mospi.nic.in/sites/default/files/publication_reports/ ES_2020 240420a.pdf)

7.25. From the aforesaid tables it transpires that there was total addition of 2200.90 MW of Wind capacity in Gujarat as compared to 5463.98 MW capacity addition at the National level during the period of 3 years from FY 2017-18 to FY 2019-20.

7.26. We note that the increase in RPO percentage is required to be considered taking into account the incremental consumption of the licensees in the State while comparing the incremental capacity of Wind energy generation in the State as well as at the National Level. The Renewable Purchase Obligation specified for Wind energy for FY 2017-18 was 7.75%, for FY 2018-19 was 7.95 % and for FY 2019-20 it was 8.05%. However, the Petitioner has achieved compliance of the target for Wind RPO of FY 2019-20.

7.27. As far as Solar capacity addition is concerned, it transpires from the tables above that there was total addition of 1699.37 MW of Solar capacity in Gujarat as compared to 22338.99 MW capacity addition at the National level during the period of 3 years from FY 2017-18 to FY 2019-20. Moreover, on comparison of addition in Solar capacity from FY 2017-18 to FY 2019-20, it shows upward trend in FY 2018-19 and then downward trend in FY 2019-20 at the State level whereas at the National level there is downward trend for both F.Y. The capacity addition of Solar power in the State was 852.13 MW in FY 2018-19, whereas the same has reduced to 508.24 MW in FY 2019-20. As noted above, there is increase in total consumption in the distribution licensees' area during past three years on one hand whereas addition in Solar capacity has reduced on other hand.

7.28. We note that the present petition filed by the Petitioner Deendayal Port Trust seeking adjustment of excess RPO compliance of wind against Solar and Other category of RPO for FY 2019-20 Further, M/s Aspen Infrastructure Limited, Jubilant Infrastructure Limited, Torrent Power Ltd. (Dahej), GIFT Power Company Limited (GIFT) and MPSEZ Utilities Pvt. Ltd. have filed before the Commission regarding compliance of Renewable Purchase Obligations.

7.29. We further note that the Commission has in its Order dated 09.05.2022 in Petition No. 1922 of 2021 filed by Gujarat Urja Vikas Nigam Ltd. praying for revision of minimum quantum of purchase (in %) from renewable energy sources in view of supply constraints and factors beyond the control of the licensee after referring to various provisions of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and amendments thereto, recognized that the Commission is empowered to (i) revise the RPO target, (ii) carry forward the RPO to the next year, (iii) impose penalty on the obligated entities due to non-compliance of the RPO, (iv) grant exemption from payment

of regulatory charge for non-compliance of the RPO, and (v) add, amend or alter the RPO Regulations as a part of removal of difficulties by passing an appropriate order.

7.30. Moreover, in the aforesaid Order, the Commission has noted that the preamble of the Electricity Act, 2003, Tariff Policy and National Electricity Policy mandate the State Electricity Regulatory Commission to protect the interest of the consumers as specified under Section 61(d) and 94 of the Act and also promote co-generation and generation of electricity from the renewable energy sources as specified under Section 61 (h) and 86 (1) (e) of the Act and that the role of the Commission is to balance the interest of the consumers as well as the promotion of renewable energy.

7.31. We also note that in its above mentioned Order dated 09.05.2022, the Commission while referring to the judgments dated 25.04.2014 in Appeal No. 24 of 2013 and 16.04.2015 in Appeal No. 258 of 2013 & Appeal No. 21 of 2014 of Hon'ble APTEL and elaborately quoting the relevant paragraphs wherein Hon'ble APTEL recognized that revision of the RPO targets by the Commission before or during a year or after passing of the year is permissible by exercising its power under Regulation 4.2 of the RPO Regulations, 2010 in view of the reasons beyond the control of the distribution licensees or due to inadequate capacity addition in a resource rich State or if the same are found unrealistic considering the availability of renewable energy in the State or due to inadequate Renewable Capacity addition. Moreover, in the event of such revision in the Renewable Purchase Obligation targets set up under Regulation 4.1, there cannot be any further consideration of the availability of Renewable Energy Certificates or non-availability of RECs may not always be a pre-condition for exercise of powers under Regulation 4.2. The Commission may also revise the RPO targets in case of actual generation being lower than the normative generation due to reasons beyond the control of the Distribution

Licensee or there is a natural calamity or inadequate capacity addition in the State.

7.32. As noted above, apart from deciding that there were supply constraints of renewable energy in the State of Gujarat during FY 2019-20, the Commission in its Order dated 09.05.2022 in Petition No. 1922 of 2021 has further decided to consider the actual level of achievement for the State by adopting the weighted average formula in which the renewable energy available in the State and the energy procured by the distribution licensees is considered towards the RPO compliance for FY 2019-20 and decided to revise the RPO target in percentage and the status of RPO compliance by the Petitioner and other obligated entities during F.Y. 2019-20 as under:

Total RPO achieved in State:

Weighted Average RPO on the basis of compliance achieved:

RPO Category		Target RPO	RPO Achieved
Wind	%	8.05%	9.103%
	MUs	8356.213	9449.114
Solar	%	5.50%	3.524%
	MUs	5709.214	3658.274
Others	%	0.75%	0.238%
	MUs	778.529	246.671
Total	%	14.30%	12.85%
	MUs	14843.955	13342.491

7.33. As regards the overachievement of the Wind RPO for FY 2019-20 is concerned, it is relevant to refer to para 7.44 of Order dated 06.05.2022 in Petition No. 1922 of 2021 filed by GUVNL, which is as under:

"7.44 As far as the RPO for Wind energy is concerned, we observe that the weighted average RPO on basis of actual RPO achieved works out to 9.10% as against 8.05%

specified by the Commission in RPO Regulation. We also note that the Petitioner had signed the Power Purchase Agreements with Wind power project developers and has thereby tied up Wind capacity of 4353.6 MW as on *31.03.2020 in order to meet Wind RPO. It is also noted that about 285 MW capacity of Wind capacity tied up under Competitive Bidding (Phase I) got delayed for* up to *4 to 6 months and the Petitioner could not avail the benefit of generation. We also note that the Petitioner is purchasing the energy from such developers at the preferential tariff determined by the Commission. However, if the Wind RPO for the State is revised from 8.05% to 9.10%, it would burden the licensees as well the consumers. The preamble of the Electricity Act, 2003, Tariff Policy and National Electricity Policy mandate the State Electricity Regulatory Commission to protect the interest of the consumers as specified under Section 61(d) and Section 94 of the Act and also promote co-generation and generation of electricity from the renewable energy sources as specified under Section 61 (h) and Section 86 (1) (e) of the Act. Thus, the role of the Commission is to balance the interest of the consumers as well as the promotion of renewable energy. We are, therefore, of the view that the Wind RPO shall be maintained at the level of 8.05% as stipulated in the Regulations. The Petitioner and other 'Obligated Entities' shall be required to fulfill the Wind RPO @ 8.05% of their energy consumption of FY 2019-20. We also make it clear that the Wind RPO compliance @ 8.05% is to be fulfilled acer* adjustment *of carry forward of Wind energy, if any, of previous years."*

7.34. Based on the above para, the Commission has revised the Renewable Purchase Obligations for FY 2019-20 of 'Solar' and 'Others' category of the various Distribution Licensees / Obligated Entities, as under:

RPO Category	**RPO as per the Regulations notified by the Commission**	**Revised RPO Percentage**
Solar	5.50%	3.52%
Others	0.75%	0.24%

As regards Wind RPO target, the same shall be 8.05% as decided above.

7.35. As already decided by the Commission in previous paragraphs, the prayer of Petitioner to adjust the excess Wind RPO against Solar & Others RPO target of purchase from renewable energy sources for FY 2019-20 keeping in view the supply of constraints and the factors beyond the control of the licensee as per relevant provisions of RPO Regulations is allowed.

7.36. Accordingly, the actual compliance of the Renewable Purchase Obligation by the Petitioner against the revised RPO is worked out as under:

RPO Category	Revised Percentage	Achieved Percentage
Wind	8.05%	98.13%
Solar	3.52%	0.00%
Others	0.24%	0.00%
Total	11.81%	98.13%

7.37. Based on the above table, we hold that the Petitioner, Deendayal Port Authority has complied with the revised Total Renewable Purchase Obligation (RPO) for FY 2019-20. This compliance is achieved after adjustment of surplus Wind RPO towards the shortfall in Solar and Other Category RPOs for the said year, in accordance with Regulation 4 of the GERC (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018.

8. With this Order the present petition stands disposed of.

9. We order accordingly.

Sd/-	**Sd/-**	**Sd/-**
[Jatin N. Thakkar]	**[Hiren Shah]**	**[Pankaj Joshi]**
Member	**Member**	**Chairman**

Place: Gandhinagar
Date: 29/07/2026